

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY WELFARE FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER LOCAL 669 UA EDUCATION FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY PENSION FUND,)
TRUSTEES OF THE SPRINKLER INDUSTRY)
SUPPLEMENTAL PENSION FUND, TRUSTEES OF)
THE NATIONAL AUTOMATIC SPRINKLER)
INDUSTRY METAL TRADES WELFARE FUND AND)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY METAL TRADES PENSION)
FUND)
8000 Corporate Drive)
Landover, MD 20785)

Plaintiffs,)

v.)

) C.A. NO.

BIG SKY FIRE PROTECTION, INC.
831 Cerise Road
Billings, MT 59101

Serve: Mary Carpenter, Registered Agent
831 Cerise Road
Billings, MT 59101

Defendant.

COMPLAINT

**(FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT AND
TO COLLECT CONTRIBUTIONS DUE TO PLAINTIFF FUNDS)**

PARTIES

1. Plaintiffs Trustees of the National Automatic Sprinkler Industry Welfare Fund, Trustees of the National Automatic Sprinkler Local 669 UA Education Fund, Trustees of the National Automatic Sprinkler Industry Pension Fund, Trustees of the Sprinkler Industry Supplemental Pension

Fund Trustees of the National Automatic Sprinkler Industry Metal Trades Welfare Fund and Trustees of the National Automatic Sprinkler Industry Metal Trades Pension Fund (hereinafter collectively referred to as the "NASI Funds") are employee benefit plans as that term is defined in Section 3(3) of the Employee Retirement Income Security Act ("ERISA") of 1974, 29 U.S.C. § 1002(3). Plaintiff Funds are established and maintained according to the provisions of the Restated Agreements and Declarations of Trust establishing the NASI Funds (hereinafter "Trust Agreements") and the Collective Bargaining Agreements between Sprinkler Fitters Local Unions No. 669 and 483 and the Defendant Big Sky Fire Protection, Inc. (hereinafter "Big Sky") The NASI Funds are administered at 8000 Corporate Drive, Landover, Maryland 20785.

2. Defendant Big Sky Automatic is a corporation existing under the laws of the State of Montana with offices located in Montana. Defendant Big Sky transacts business in the State of Montana as a contractor or subcontractor in the sprinkler industry and all times herein was an "employer in an industry affecting commerce" as defined in Sections 501(1), (3), 2(2) of the Labor-Management Relations Act, 29 U.S.C. Sections 142(1), (3) and 152(2); Section 3(5), (9), (11), (12), (14) of ERISA, 29 U.S.C. Sections 1002(5), (9), (11), (12), (14); and Section 3 of the Multi-Employer Pension Plan Amendments of 1980, 29 U.S.C. § 1001(a).

JURISDICTION

3. This Court has jurisdiction of this action under Sections 502 and 515 of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132 and 1145, and under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a). This is an action for breach of a Collective Bargaining Agreement between an employer and a labor organization representing employees in an industry affecting commerce and an action to collect contributions due to employee benefit plans under the terms of the Collective Bargaining Agreement.

COUNT I

4. Defendant Big Sky is signatory to a Collective Bargaining Agreement with Sprinkler Fitters Local Unions Nos. 669 and 483 requiring contributions to the NASI Funds for each hour of work by employees performing installation of automatic sprinkler systems.

5. Defendant Big Sky employed certain employees covered by the Collective Bargaining Agreements during the period of January 2012 through the present.

6. Defendant Big Sky is bound to the Trust Agreements and to the Guidelines for Participation in the NASI Funds (hereinafter "Guidelines").

7. Defendant Big Sky has failed to pay complete contributions in the amount of \$203,479.94 due to Plaintiff Funds for the months of February 2013 through June 2013 for work performed in the jurisdiction of Road Sprinkler Fitters Local Union 669. Pursuant to the terms of the Collective Bargaining Agreement, Defendant Big Sky is obligated to submit report forms and pay contributions owed to Plaintiff Funds.

8. Defendant Big Sky has failed to pay contributions due to Plaintiff Funds for the months of April 2013 through August 2013 for work performed in the jurisdiction of Sprinkler Fitters Local Union 483 and has failed to pay contributions due to Plaintiff Funds for the months of July and August 2013 for work performed in the jurisdiction of Road Sprinkler Fitters Local Union 669. In addition, Defendant has failed to submit report forms for these months. Pursuant to the terms of the Collective Bargaining Agreements, Defendant is obligated to submit report forms and pay contributions owed to Plaintiff Funds.

9. Pursuant to Article VI, Section 6 of the Restated Agreements and Declarations of Trust establishing the NASI Funds, when an employer fails to file the properly completed report forms,

in order to determine the amounts due, the Funds are authorized to project the delinquency amount using the following formula:

. . . The Trustees may project as the amount of the delinquency the greater of the average for the monthly payments actually made by the Employer for the last three (3) months for which payments were made, or the average of the monthly payments made by the Employer for the last twelve (12) months for which payments were made. . .

10. Using report forms submitted for the last three (3) months for which reports were submitted, the projected delinquency for the months of April 2013 through August 2013 for work performed in the jurisdiction of Sprinkler Fitters Local Union 483 and for the months of July and August 2013 for work performed in the jurisdiction of Road Sprinkler Fitters Local Union 669 is \$69,614.95 calculated as follows:

<u>Month</u>	<u>Local</u>	<u>Welfare Reported</u>	<u>Pension Reported</u>	<u>SIS</u>
January 2013	483	\$70.16	\$44.00	\$76.00
February 2013	483	\$0.00	\$0.00	\$0.00
March 2013	483	\$280.64	\$176.00	\$304.00
Monthly Average:		\$116.93	\$73.33	\$126.67

<u>Month</u>	<u>Local</u>	<u>Welfare Reported</u>	<u>Education Reported</u>	<u>ITF Reported</u>
April 2013	669	\$14,622.64	\$616.70	\$176.20
May 2013	669	\$18,982.46	\$803.25	\$229.50
June 2013	669	\$11,758.53	\$488.78	\$139.65
Monthly Average:		\$15,121.21	\$636.24	\$181.78

<u>Month</u>	<u>Local</u>	<u>Pension Reported</u>	<u>SIS Reported</u>	<u>MT Welfare Reported</u>	<u>MT Pension Reported</u>
April 2013	669	\$8,481.00	\$5,305.68	\$2,829.00	\$601.16
May 2013	669	\$10,686.50	\$6,292.55	\$3,971.00	\$843.84

June 2013	669	\$7,680.75	\$4,074.55	\$2,855.00	\$606.69
Monthly Average:		\$8,949.42	\$5,224.26	\$3,218.33	\$683.90

11. Defendants' contributions on behalf of its sprinkler fitter employees for the months of January 2012 through December 2012 and partial contributions for March 2013 were paid late. The specific amounts paid and the date in which the Defendants' contributions were received by the NASI Funds are set forth on the attached breakdown (Exhibit A)

12. Defendant Big Sky's partial contributions on behalf of its sprinkler fitter employees for the month of February 2013 through August 2013 are late.

13. Pursuant to the Trust Agreements and the Guidelines for Participation in the NASI Funds, an employer who fails to pay the amounts required by the Collective Bargaining Agreement on time shall be obligated to pay liquidated damages as follows:

- (1) If payment is not received in the Funds Office by the 15th of the month, 10% of the amount is assessed.
- (2) An additional 5% is added if payment is not received in the Funds Office by the last working day of the month in which payment was due.
- (3) An additional 5% is added if payment is not received by the 15th of the month following the month in which payment was due.

14. Pursuant to this provision, Defendant Big Sky is obligated to Plaintiff Funds in the amount of \$142,903.56 in liquidated damages assessed on late contributions for the months of January 2012 through August 2013, plus interest from the date of delinquency through the date of payment at the rate provided in 29 U.S.C. Section 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

WHEREFORE, in Count I, Plaintiff Funds pray for judgment against the Defendant as follows:

A. In the amount of \$273,094.89 for contributions due for work performed in May 2102, June 2012 and August 2012 through August 2013, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

B. In the amount of \$142,903.56 for liquidated damages assessed on late contributions for the months of January 2012 through August 2013, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

C. For costs, interest, and reasonable attorneys' assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

D. For all contributions and liquidated damages which become due subsequent to the filing of this action through the date of judgment, plus costs, interest, and reasonable attorneys' fees, pursuant to 29 U.S.C. § 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

E. For such further relief as the Court may deem appropriate.

Respectfully submitted,

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By: 

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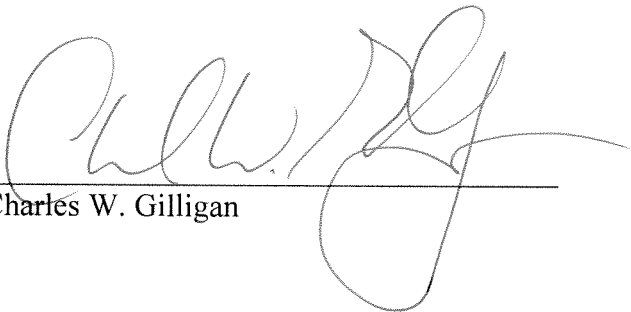
CERTIFICATE OF SERVICE

This is to certify that on this 14th day of October 2013 a copy of the foregoing

Complaint was sent by first class mail, postage prepaid to:

The Office of Division Counsel
Associate Chief Counsel (TE/GE) CC: TEGE
Room 4300
1111 Constitution Avenue
Washington, DC 20224
Attention: Employee Plans

Secretary of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
ATTENTION: Assistant Solicitor for
Plan Benefits Security



Charles W. Gilligan